

## 23.800

### 23.800 Scope of subpart.

This subpart sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances.

[60 FR 28500, May 31, 1995, as amended at 61 FR 31645, June 20, 1996]

### 23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Executive Order 12843, April 21, 1993.

(c) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

### 23.802 Definition.

*Ozone-depleting substance* means—

(a) Any substance designated as Class I by EPA (40 CFR part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(b) Any substance designated as Class II by EPA (40 CFR part 82), including but not limited to hydrochlorofluorocarbons.

[61 FR 31645, June 20, 1996]

### 23.803 Policy.

(a) It is the policy of the Federal Government that Federal agencies:

(1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and

(2) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.

(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall ensure that acquisitions:

(1) Comply with the requirements of Title VI of the Clean Air Act, Executive Order 12843, and 40 CFR 82.84(a) (2), (3), (4), and (5); and

(2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case

## 48 CFR Ch. 1 (10-1-99 Edition)

of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(r).

[60 FR 28500, May 31, 1995, as amended at 61 FR 31645, June 20, 1996]

### 23.804 Contract clauses.

Except for contracts to be performed outside the United States, its possessions, and Puerto Rico, the contracting officer shall insert the clause at:

(a) 52.223-11, Ozone-Depleting Substances, in solicitations and contracts for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.

(b) 52.223-12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

[61 FR 31645, June 20, 1996]

## Subpart 23.9—Toxic Chemical Release Reporting

SOURCE: 60 FR 55307, Oct. 30, 1995, unless otherwise noted.

### 23.901 Purpose.

This subpart implements the requirements of Executive Order (E.O.) 12969 of August 8, 1995, Federal Acquisition and Community Right-to-Know. (See also EPA Notice, "Guidance Implementing Executive Order 12969" (60 FR 50738, September 29, 1995).)

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996]

### 23.902 General.

(a) The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act of 1990 (PPA) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released by manufacturing facilities into the air, land, and water in its communities.

(b) Under EPCRA section 313 (42 U.S.C. 11023), and PPA section 6607 (42 U.S.C. 13106), the owner or operator of certain manufacturing facilities is required to submit annual reports on toxic chemical releases and waste management activities to the Environmental Protection Agency (EPA) and the States.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996]

### 23.903 Applicability.

(a) This subpart applies to all competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts.

(b) This subpart does not apply to—

(1) Acquisitions of commercial items as defined in part 2; or

(2) Contractor facilities located outside the United States. (*The United States*, as used in this subpart, includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.)

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996]

### 23.904 Definition.

*Toxic chemicals* means reportable chemicals currently listed and added pursuant to EPCRA sections 313 (c), (d), and (e), except for those chemicals deleted by EPA using the statutory criteria of EPCRA, sections 313 (d) and (e).

### 23.905 Policy.

(a) It is the policy of the Government to purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment.

(b) Federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

### 23.906 Requirements.

(a) E.O. 12969 requires that solicitations for competitive contracts expected to exceed \$100,000 (including all

options) include, to the maximum extent practicable, as an award eligibility criterion, a certification by the offeror that, if awarded a contract, either—

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities, the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313 (a) and (g) and PPA section 6607; or—

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities—

(i) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);—

(ii) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);—

(iii) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);—

(iv) Do not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in 19.102; or—

(v) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.—

(b) A determination that it is not practicable to include the solicitation provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement official at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of \$500,000 (including all options), the agency